

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date: **August 11, 2008**

Time: 9:30am

Place: Olmsted Room

Members

(Attendees = x)

Commission Members

xChair, Canyon W. Anderson, <i>Davis Cnty</i>	x Garry M. Goodsell, <i>Iron Cnty</i>
xGlen W. Roberts, <i>Utah Cnty</i>	xDavid M. Lattin, <i>Salt Lake Cnty</i>
xJerry M. Houghton, <i>Tooele Cnty</i>	

Department Staff

xJohn E. "Mickey" Braun, Jr. <i>Ass't Commissioner</i>	xPerri Babalis <i>AG Legal Counsel</i>	Darrel Powell <i>Dir. Market Conduct</i>	xMark Kleinfeld <i>Admin. Law Judge</i>
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xBrad Tibbitts <i>Dir. P&C& Life</i>	xTammy Greening <i>MC Examiner</i>	xSheila Curtis <i>MC Examiner</i>	xConnie Nowland <i>MC Examiner</i>	Sandra Halladay <i>MC Examiner</i>
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xJilene Whitby
PIO/Recorder

Public

Al Newman	David Moore	James Seaman	Corlen Charnel	Jennifer Saxton
Jack Marinello	Dan Paulsen	Matt Broadbent		

MINUTES

I. **Welcome and Introductions** / Canyon Anderson, Chair

Canyon began the meeting at 9:40am at the conclusion of the rule hearing for R592-6 (old R590-153).

II. **Adoption of Minutes of Previous Meeting**

Garry noted that the reference to \$20 million in the third bullet under "Old Business: Review Comments for R592-7, 8, and 9" was incorrect. It should be \$350,000. Al Newman thought the reference to \$500,000 in the same paragraph was incorrect. It was decided that the entire sentence should be deleted. Glen then **moved** to accept the minutes with these changes, Jerry seconded it and the vote was unanimous in favor of the motion.

III. **Review & Concur with Licensee Report**

Canyon asked about the status of a lapsed license. Mickey noted that with nearly 80,000 licensees the department is unable to follow-up on lapsed licenses. Garry **moved** to concur with the report and Glen seconded it. The vote was unanimous.

IV. **Number of Cases Open & Closed**

- Commission members expressed approval for the number of investigations opened and closed last month, 26/17. Canyon asked if those submitting complaints were receiving verification that the complaint was received. David and Garry verified they were going out. The opened and closed reports don't necessarily indicate resolution; just what is moving through the enforcement process.
- Canyon asked if the Commission should be performing hearings. Perri noted that Rule R592-2 delegated the hearing process to the department. This did not apply to Stipulations and Orders. Perri suggested that the Commission could direct Gale to

provide more information in the Stipulations and Orders. David made a **motion** to accept the reports, Glen seconded it and the vote was unanimous in its favor.

V. Review & Concur with Enforcement Case Report / Mark Kleinfeld

- Mark said that in the future he would try to give the facts of the cases to Jilene to email to the Commission prior to the monthly meetings. He had two cases to bring to the Commission.
 - Dale B. Kinsey: Failed to file escrow rates with the department. He requested a hearing. His defense was that he did not do any business. The law requires licensees to file rates regardless of business done. Mark recommended that Mr. Kinsey pay \$500 and file rates within 10 days. Garry made a **motion** to approve the recommendation, Glen seconded it and the vote was unanimous in its favor.
 - New World Title Agency: Failed to file their annual report. Respondent requested a hearing. Scott Poulson, the agency principal, testified that he did not think they needed to file the report because they had not done any business during the year and someone at the department had told him that he did not need to file. The statute requires the report be filed regardless of business done. In the past he was assessed \$500 for failing to file another report. Mark recommended he pay a \$1,000 forfeiture and file the annual report within 10 days. He thought the report had been filed. Garry made a **motion** to approve the recommendation, Jerry seconded it and the vote was unanimous in its favor.
- Mark said he would make an effort to provide the Commission with more information. Canyon and others were happy with the information Mark provided.

VI. Old Business

- **Review Comments on R590-153/R592-6 Unfair Inducement / Perri**
 - Canyon said the Commission was trying to create a list of those things that can be distributed like plats, deeds, notice of defaults. They were trying to eliminate non-public information.
 - Mr. Charnel suggested a solution; have a third party sell data to the public that the title companies do not want to sell. This would be an e-commerce solution. It would require a user ID number for those obtaining information. Payment would be made up-front.
 - Perri noted that the rule comment period was open until September 2.
 - Garry thought the lending issue in the rule was limited to individuals. Perri said that the reference to "Person" in the rule included entities as well as individuals.
 - Dave M. said controlled business was not allowed. Any controlled business is bad and is definitely not allowed over the 30% level.
 - Jack referred to R592-6-5(7)(c) & (d). Does this mean you can only do one CE class per quarter per client office, or does it mean one CE course a quarter with food. Glen said it should be interpreted as one CE course a quarter per office regardless of food. Subsection (d) stands on its own.
 - Garry suggested a few clerical changes:
 - R592-6-1: The second reference to "rule" should be plural.
 - R592-6-4(21): Put a period after "client" and delete "...of title insurance."
 - R592-6-5(1): The first paragraph and Subsection (1) did not seem to flow. No new wording was suggested.
 - R592-6-5(9): Is this clear? No changes were made.
 - Jack was concerned about the interpretation of the rule. Mickey said the department could interpret the rule and if the person requesting the interpretation did not agree he or she could submit their request for an interpretation from the Commission. Canyon said they would try to work with department on urgent matters.
- **Minimum Escrow Fee Rule Amendments (R592-3 & 4) / Mickey**

- Mickey said that rules R592-3 & 4 could not be amended to show the minimum escrow fee levels until R592-6 was put into effect. Glen suggested writing a separate rule for minimum escrow fees. Perri said she was doing research to see if setting a minimum premium for an industry would violate the Sherman Anti-trust law. James suggested looking to Idaho for some direction. Canyon thought 31A-19a-209 provided the authority to set minimums. Mickey said he would write a separate rule.
- Canyon reviewed the escrow fee levels:
 - \$0-\$180,000 escrow minimum closing fee of \$150 per side.
 - \$180,000 - \$300,000 escrow minimum closing fee of \$250 per side.
 - \$300,000 - \$500,000 escrow minimum closing fee of \$300 per side.
 - \$500,000 - and up, escrow minimum closing fee of \$350 per side.
- David M. did not know of any empirical evidence that these levels make money. Utah's fees are in the middle of other western state fees. The market should determine the rates. Everyone's expenses are different. Minimum rates don't take this into account. Couldn't reporting requirements be strengthened to verify the "cost of doing business" was law was being obeyed? Canyon said that the industry has moved away from financial institution oversight. There is a net worth requirement on daily escrow balances that applies to everyone, regardless of where they are located and is based on what is in the account. He suggested strengthening the net worth requirements.
- Al suggested adding a catchall phrase to the rule that would allow a lower rate once it was filed, reviewed and approved by the Commission. David and Garry liked the idea. Jerry concerned that everyone would file lower rates. Al said that would indicate that the rates were too high. It was agreed that this would be added to the rule.
- **Email from Real Estate Division / Mickey**
 - This has already been handled. Delete from the agenda.
- **Trust Accounts and Bounced Checks**
 - James will send Mickey a rough draft of a rule he can use for the basis of a new rule.
- **Coldwell Banker Disbursement Procedure Bulletin? / Glen**
 - Agents can only receive compensation through a broker. Is cutting more than one check a violation of R590-153-4(R)? It is a violation of RESPA and would require additional 1099s. Al said that the Real Estate Division would compromise on their law and cause title agents to violate insurance laws and rules. Glen said he was told that if a title agent receives compensation from anyone other than the real estate agent they are in violation. Glen wanted a bulletin requiring agencies to specify where their money is going on a HUD. Mickey said a bulletin from the department would have no power of law over another state department's rules and laws.
 - Al asked if the Commission could give its own interpretation of the unfair inducement law. Mickey said the Commission would have to make a finding that an action is unfair then it can be added to the rule as an unfair inducement. Mickey thought R590-153-4(I) would not require a finding. Dave M. said (C) would not need a finding either. Glen noted that the Commission was trying to solve a Real Estate Division problem. Garry noted that if we charge for cutting additional checks we are not in violation of our law. Canyon suggested stating in the bulletin that "it is determined that not charging for issuing checks is a violation of R593-153-4(C), (D) & (F). Mickey will work on it.
 - Mickey suggested the Title Commission send a letter to the Real Estate Division asking them to enforce their law. Canyon said bulletin would clarify to agents that a disbursement done without charge was a violation.
 - One gentleman asked if the Title and Real Estate Commission could meet together? Perri said they could. Garry asked if the county has the duty to investigate? Perri said no.
- **Update of Coldwell Banker Disbursement Instructions / Canyon**

See discussion under Coldwell Banker Disbursement Procedures Bulletin.

VII. **New Business**

- **Insurance Department Corrective Action Policy / Mickey**

Perri will try to draft a non-disclosure agreement for the Commission to sign for the next meeting. That way the Commission can review the department's matrix and Corrective Action Policy.

- **Review the Revised Matrix with the Commission / Mickey**

Will be done as soon as the non-disclosure agreement is available and signed.

- **Flip Transactions / Mickey**

- Mickey requested the Commission's assistance in determining the appropriate statutory prohibition against illegal flips. The current prohibition based on "good funds," does not appear to be the appropriate statutory prohibition. There are fraud statutes that apply, however these statutes cannot be used for administrative action.
- Jack asked what had given rise to this question? Mickey said that the administrative side of the department had brought the issue to him.
- David M. said lenders should sign off that they know a transaction is a flip.
- Glen asked that this be tabled for next month's meeting. He suggested they research the issue. The prohibition for illegal flips wraps around transaction. We need to define transaction first. Canyon said procedural safeguards could be provided.

- **Escrow Filings / Mickey**

Mickey reminded the Commission and the title industry that escrow filings are to be filed with Tracy Klausmeier, the Rate Analyst for the Property & Casualty Division. Sending them to an examiner slows down the process.

- **Bundled Rates / Mickey**

R592-3&4 developed a form that said you must fill in the rates for all listed items along with an hourly rate for Other Settlement charges. Someone added a line to the form for a bundled fee. Did the Commission intend the form for those fees specifically listed and everything else would be based on an hourly fee or did they foresee the adding of additional lines? Glen said they did not intend additional lines being added. Rates can't be bundled. Jack said bundled rates would need to be itemized. Mickey suggested changing the rule form to add a line item for bundled rates. The Commission agreed. The Commission said that Mickey should reject the filing. Canyon said that tracking or reconveyance fees could still be filed.

VIII. **Other Business** from Committee Members

- Mickey asked that Filing Regulation Assessment be put on next month's agenda.
- Mickey said he was drafting the following rules: R592-10 (old R590-187), R592-11 (old R590-136) and R592-12 (old R590-212). These proposed rules will be ready by the next meeting and should be added to next month's agenda.

IX. **Adjourned:** 1:15pm

X. **Next Meeting** September 8, 2008, 9a.m.

2008 Meetings

Sept 8, Olmsted Rm

Oct 13, Olmsted Rm

Nov 10, Olmsted Rm

Dec 8, Olmsted Rm